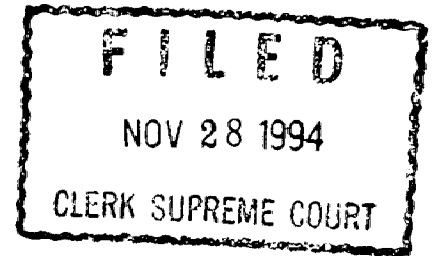


IN THE COURT OF APPEALS OF IOWA

No. 4-366 / 94-121



RUBY ROBBINS,

Appellant,

vs.

MERCY HOSPITAL MEDICAL
CENTER,

Appellee.

Appeal from the Iowa District Court for Polk County,
Ross A. Walters, Judge.

Plaintiff in personal injury case appeals from grant of
summary judgment motion. **AFFIRMED.**

J. Keith Rigg, Des Moines, and Jerry R. Foxhoven,
Des Moines, for appellant.

Glenn Goodwin of Finley, Alt, Smith, Scharnberg & May,
P.C., Des Moines, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Ruby Robbins injured herself while attempting to exit Mercy Hospital through a revolving door. The only witnesses to the accident were Ruby and her daughter, Delores Byers.

Ruby remembered little of the accident. She remembered attempting to enter the revolving door, apparently striking a hard rubber thing, and hitting her head. Byers heard a scream and looked back to see Ruby "airborne." Ruby landed on the marble floor resulting in a broken tail bone and a torn rotator cuff.

Ruby brought suit against Mercy on theories of negligence and premises liability. The trial court granted Mercy's motion for summary judgment. The court declared, "Viewing the discovery record in the light most favorable to Plaintiff, the most the record shows is that there was an unanticipated and unexplained malfunction of the automatic revolving door." It determined this evidence was insufficient to "impose liability for negligence on the property owner under a theory of res ipsa loquitur, or premises liability." Ruby appeals.

I. Scope of Review.

Our review of the trial court's summary judgment ruling is for correction of error at law. Iowa R. App. P. 4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e).

II. Res Ipsa Loquitur.

Plaintiff argues she should be entitled to a trial under the doctrine of res ipsa loquitur. Before allowing a plaintiff to invoke this doctrine, the court must find the plaintiff has established each of two essential foundational requirements. Tappe v. Iowa Methodist Med.

Ctr., 477 N.W.2d 396, 399 (Iowa 1991). Plaintiff must prove (1) defendant had exclusive control and management of the instrument that caused the plaintiff's injury, and (2) it was the type of injury that ordinarily would not occur if reasonable care had been used. Id. (citation omitted).

The first element, exclusive control, is not present here. Defendant was not responsible for the design, manufacturing, or maintenance of the doors allegedly causing the injury. Plaintiff assumes there was some type of malfunction in the doors, although she did not see it malfunction, nor had she been able to identify any witness who actually saw a malfunction in the door. Even if there was a design error which allowed the door to malfunction, defendant did not design the door. Horton Automatics designed the door. Plaintiff has made no claim against Horton Automatics. Defendant did not have exclusive control, or any control, over the design process or the safety mechanisms included.

Finally, there is at least some evidence other persons may have been using the doors at the time of this incident. Those persons may have pushed the door faster than its automatic operation or caused the safety mechanism to stop the doors -- allowing plaintiff to strike a nonmoving door, or they may have caused the incident in some other manner. In fact, plaintiff herself may have been the cause of injury.

Under these circumstances, defendant did not have exclusive control over the instrument allegedly causing the injury. Therefore, there was no admissible fact question generated under the doctrine of res ipsa loquitur.

III. Premises Liability.

Plaintiff's other theory of liability is the doors were an unreasonably dangerous condition and defendant, as premises owner, owed a duty to make the premises safe. Concerning a landowner's duty to invitees, our supreme court has applied the principles set out in the Restatement (Second) of Torts at sections 343 and 343A. See Byers v. Contemporary Indus. Midwest, Inc., 419 N.W.2d 396, 397 (Iowa 1988); Mundy v. Warren, 268 N.W.2d 213, 217 (Iowa 1978); Hanson v. Town & Country Shopping Ctr., Inc., 259 Iowa 542, 546-49, 144 N.W.2d 870, 873-75 (1966). Generally, these principles state a landowner is liable to invitees for harm caused by a condition on the land only if the owner:

(a) Knows or by the exercise of reasonable care should discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) Should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) Fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343 (1965); see Stover v. Lakeland Square Owners Ass'n, 434 N.W.2d 866, 872 (Iowa

1989) (quoting Restatement). These principles are qualified by section 343A, which applies when a condition on the land is known or obvious to the invitee. Restatement (Second) of Torts § 343 cmt. a; § 343A (1965). In such a case, liability will only arise when a landlord "should anticipate the harm despite such knowledge or obviousness." See id. § 343A; Mundy, 268 N.W.2d at 217.

We leave aside the question of whether the revolving door represented an "open and obvious danger" under section 343A. It is altogether clear summary judgment was proper under the standard of section 343. Plaintiff presents no evidence there was any failure to monitor, inspect, or maintain these doors. Plaintiff presents no witnesses who saw a malfunction and no experts who can explain whether a malfunction was even possible. Defendant presented much evidence the doors were nearly new, adequately monitored, and worked properly before and after plaintiff's injury. In short, there is no evidence at all from which to conclude defendant had superior knowledge of a defect or a dangerous condition.

A jury question on liability can only be generated if there is some evidence defendant knew, or should have known, this door had a propensity to malfunction. In the absence of such evidence, summary judgment was appropriate.

Judgment of the trial court affirmed.

AFFIRMED.